IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 26219 of 2007(U)

PETITIONER:

ANIL PRASAD @ KANNAN, AGED 36 YEARS,
S/O.RAMACHANDRAN, THERATTEPPILLIL,
MANICKAMANGALAM KARA, MATTOOR VILLAGE.

BY ADV. SRI.C.S.MANU
SRI.ANOOP.V.NAIR

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KERALA, DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
2. **DIRECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM.**
3. **DISTRICT MAGISTRATE, ERNAKULAM.**
4. **SUPERINTENDENT OF POLICE (RURAL), ALUVA, ERNAKULAM DISTRICT.**
5. **SUB INSPECTOR OF POLICE, KALADY POLICE STATION, KALADY, ERNAKULAM.**

BY GOVERNMENT PLEADER SRI. I.V. PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC,J.

W.P (C) No. 26219 of 2007

Dated this the 7th day of September, 2007

J U D G M E N T

The prayer in this writ petition is to direct the respondents not to cause the detention of the petitioner under the provisions of the Kerala Anti-social Activities (Prevention) Ordinance 2007 for occurrences/activities that have taken place prior to the promulgation of the said Ordinance. The petitioner also seeks a declaration that the petitioner is not liable to be detained under the provisions of the said Ordinance.

2. The main ground urged is the Ordinance 21 of 2007 came into force only with effect from 13.12.2006 and therefore his conduct prior to 13.12.2006 cannot be form basis of an order of detention under Clause 3 (1) of the Ordinance. It is also stated that since the petitioner is living as a law-abiding citizen there is no circumstance warranting his detention.

3. In so far as the first contention is concerned Section 3 of the Ordinance, confers power to make orders detaining Known Goondas and Known Rowdies. The expressions Known- Goonda and Known- Rowdy have been defined in Clause 2 (o) (p) of Ordinance No.21 of 2007, which are extracted below:

(o) “Known Goonda” means a goonda who had been, for acts done within the previous seven years as calculated from the date of the order imposing any restriction or detention under this Ordinance:-

(i) found guilty, by a competent court or authority at least once for an offence within the meaning of the term ' goonda' as defined in clause (j) of Section 2; or

(ii) found in any investigation or enquiry by a competent police officer or other competent authority, on complaints initiated by persons other than police officers, in two separate instances not forming part of the same transaction, committed any act within the meaning of the term 'goonda' as defined in clause (j) of Section 2.

(p) “Known Rowdy” means any person, who had been found, by reason of acts done within the previous seven years as calculated from the date of the order imposing any restriction or detention under this Ordinance:-

(i) guilty, by a competent Court at least once for an offence of the nature under item (i) of clause (t) of Section 2 or any offence notified as such under the said clause;

(ii) guilty, by a competent court at least twice for any offence of the nature under item (ii) of clause (t) of Section 2 or any offence notified as such under the said clause;

> (iii) committed, on investigation or enquiry by a competent police officer or other competent authority, on complaints initiated by persons other than police officers, in three separate instances not forming part of the same transaction, any offence mentioned in clause (t) of Section 2.

4. It is evident from the above that conduct in the previous several years is relevant for the purpose of Ordinance. Therefore the fact that the ordinance come into force with effect from 13.12.2006 does not mean that the conduct of a person before that is irrelevant for detention under Clause 3.

5. In so far as the 2nd prayer that the petitioner is not liable to be detained is concerned, this prayer is premature in as much as the petitioner has not been ordered to be detained so far. If the authority under the Ordinance passes an order of detention, it is only at that stage the petitioner will get a cause of action against such detention. This court cannot pass preventive order as sought by the petitioner. In any case it is primarily for the authorities to be satisfied whether the petitioner deserves to be detained under the Ordinance.

The reliefs sought for cannot be granted. The writ petition lacks in merit and it is dismissed.

(ANTONY DOMINIC, JUDGE)

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ANTONY DOMINIC,J

O.P. NO.6504 OF 2000

JUDGMENT
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4TH SEPTEMBER, 2007